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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/587,302

06/05/2000

Hoa Thu Tran

9172 NCRC-0011-US

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07/20/2009

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EXAMINER

ANYA, CHARLES E

ART UNIT

PAPER NUMBER

2194

MAIL DATE

DELIVERY MODE

07/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HOA THU TRAN and MATHEW DICKEY

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Appeal 2008-003077  
Application 09/587,302  
Technology Center 2100

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Decided:<sup>1</sup> July 20, 2009

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Before ALLEN R. MACDONALD, JOHN C. MARTIN and  
HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Data (electronic delivery).

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-3, 5, 7, 9-11, 13-16, 19-21, and 23-35. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

### STATEMENT OF THE CASE

According to Appellants, the invention relates to controlling software components in a multi-node processing system.<sup>2</sup>

#### *Exemplary Claim*

1. A method of controlling software components in a processing system having plural nodes, comprising:

receiving a request to start the processing system;

launching a start routine in a first one of the nodes in response to the request; the start routine causing one or more services to be invoked in each of the nodes;

determining one or more selected software components to start in each of the nodes; and

the service starting the selected software components in each of the nodes of the processing system.

#### *Prior Art*

The Examiner relies on the following prior art references to show unpatentability:

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<sup>2</sup> See Spec. 1:2-3.

Bezviner	5,613,148	Mar. 18, 1997
Daly	5,748,896	May 5, 1998
Held	5,802,367	Sep. 1, 1998

*Examiner's Rejections*

1. The Examiner rejected claims 1-3, 5, 7, 9-11, 20, 23, 26, and 27 under 35 U.S.C. 103 (a) as unpatentable over Held and Daly.
2. The Examiner rejected claims 24 and 25 under 35 U.S.C. § 103(a) as unpatentable over Held, Daly, and Bezviner.
3. The Examiner rejected claims 13-16, 19, 21, and 28-35 under 35 U.S.C. § 103(a) as unpatentable over Bezviner and Daly.

THE REJECTION OVER HELD AND DALY

*Claims 1-3, 5, 7, 9-11, 20, 23, 26, and 27*

ISSUE

The issue before us is whether the prior art teaches or suggests services that start the selected software components in each of the nodes of the processing system.

FINDINGS OF FACT

1. The Examiner found "Figures 3 and 5 [explain] this network service instantiation by providing a server manager window that shows the instantiation of plural E-mail services and plural file services on a plurality of running servers (servers AB, CD and EF)" (emphasis omitted) (Ans. 5).

## PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). Discussing the question of obviousness of claimed subject matter involving a combination of known elements, *KSR Int'l v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007), explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *Sakraida* [v. *AG Pro, Inc.*, 425 U.S. 273 (1976)] and *Anderson's-Black Rock[, Inc., v. Pavement Salvage Co.*, 396 U.S. 57 (1969)] are illustrative—a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

*Id.*

If the claimed subject matter cannot be fairly characterized as involving the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement, a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *Id.* at 418. Such a showing requires:

“some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

*Id.* (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner’s burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

## ANALYSIS

The Examiner relies on Daly to teach or suggest (1) causing one or more services to be invoked in each of the nodes, and (2) starting the selected software components in each of the nodes of the processing system (Ans. 4). The Examiner found Figures 3 and 5 illustrate the instantiation of E-mail services and file services on a plurality of running servers, *i.e.*, servers AB, CD and EF (FF 1). Further, the Examiner found "[t]he fact that these services, servers and their related software components are instantiated and running implies that they were invoked and started, therefore allowing for the invocation of services and subsequently starting of software components in a plurality (each) of the nodes" (Ans. 5).

Appellants contend "[i]t is not seen that Figure 5A or the referenced text of Daly teaches or suggests 'the start routine causing one or more services to be invoked in each of the nodes,' let alone the invoked services starting selected software components in each of the nodes" (App. Br. 7). Appellants argue (1) "Figure 5A illustrates an architecture for a remote network administrative apparatus, the architecture including a component repository, a service manager component 104 and a server manager window 108," and (2) "[t]he text . . . describes a process for obtaining network service instantiation data from a computer network and returning that data to the server manager component 104 to be displayed in server manager window 108" (App. Br. 7).

We agree with the Examiner that network services are instantiated on the plurality of running servers (*i.e.*, corresponding to the claimed nodes) (*See* FF 1). However, we find that the Examiner does not explain, with specificity, how Daly teaches "the service starting the selected software components in each of the nodes," as recited in exemplary claim 1.

Accordingly, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding exemplary claim 1. Appellants' arguments with regard to exemplary claim 1 also apply to claims 2-3, 5, 7, 9-11, 20, 23, and 26-27 (*See* Appeal Br. 7). Appellants do not argue claim 23, which was rejected over Held and Daly, in this section of the Appeal Brief (App. Br. 7). However, Appellants argue claim 23, as being in condition for allowance, later in the Appeal Brief (App. Br. 10). Thus, the Examiner's rejection of claims 1-3, 5, 7, 9-11, 20, 23, and 26-27 is reversed.

THE REJECTION OVER HELD, DALY AND BEZVINER

*Claims 24 and 25*

The Examiner rejected claims 24 and 25 over Held, Daly, and Bezviner. However, Appellants only argue claims 24 and 25 with respect to the Held and Daly references. Claims 24 and 25 depend from exemplary claim 1. Thus, for the reasons discussed above with regard to exemplary claim 1, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding claims 24 and 25. Accordingly, the Examiner's rejection of claims 24 and 25 over Held, Daly, and Bezviner is reversed.

THE REJECTION OVER BEZVINER AND DALY

*Claims 13-16, 19, 21 and 28-35*

ISSUE

The issue before us is whether the prior art teaches or suggests a start procedure executable in a first one of the plurality of nodes to invoke the services in the plurality of nodes through the manager module.

Appellants substantially repeat the arguments made with regard to exemplary claim 1.<sup>3</sup> Thus, for the reasons found above, with regard to exemplary claim 1, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding independent claim 13. Accordingly, we find that the rejection of claim 13, and claims 14-16, 19, and 28-30, which depend from independent claim 13, is reversed.

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<sup>3</sup> Appellants argue claims 13 -16, 19, and 28-30 under the heading "The 103(a) Rejections over Bezviner in view of Held", but argue claims 13-16, 19, 21, and 28-35 with regard to the Daly reference (App. Br. 8-9).



Appellants separately argue claims 21 and 33. However, Appellants substantially repeat the arguments made with regard to exemplary claim 1. Thus, for the reasons found above with regard to exemplary claim 1, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding (1) independent claim 21 and claims 31-32, which depend therefrom, and (2) independent claim 33 and claims 34-35, which depend therefrom. The rejection of claims 21 and 31-35 is reversed.

#### DECISION

We reverse the Examiner's decision rejecting claims 1-3, 5, 7, 9-11, 13-16, 19-21, and 23-35.

#### REVERSED

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